

HOUSE BILL No. 5980

April 25, 2006, Introduced by Reps. Bieda, Tobocman, Kolb, Lipsey, Hopgood, Alma Smith, Byrnes, Anderson, Angerer, Donigan, Cushingberry, Vagnozzi, Polidori, Gonzales and Wojno and referred to the Committee on House Oversight, Elections, and Ethics.

A bill to establish standards of ethical conduct for employees and officials in the executive branch of state government; to impose certain conditions on employees and officials in the executive branch of state government and enhance accountability; to require public disclosure by employees and officials in the executive branch of state government of certain transactions and to require the filing of a transactional disclosure statement; to create a board of ethics; to provide for enforcement; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 1. DEFINITIONS; GENERAL PROVISIONS.

1

1 Sec. 101. This act shall be known and may be cited as the
2 "ethics act for executive branch officials and employees".

3 Sec. 103. This act is intended to implement section 10 of
4 article IV of the state constitution of 1963. It is the intent of
5 the legislature that this act shall be taken into consideration in
6 determining the construction and effect of section 10 of article IV
7 of the state constitution of 1963.

8 Sec. 105. For the purposes of this act:

9 (a) "Anything of value" means a tangible or intangible item
10 that has economic value and that could reasonably be considered to
11 be an advantage or of worth, use, or service to the person upon
12 whom it is conferred. Anything of value does not include any of the
13 following:

14 (i) An unsolicited token or award with a value of less than
15 \$150.00.

16 (ii) An unsolicited advertising item with a value of less than
17 \$50.00.

18 (iii) An unsolicited publication with a market value of less
19 than \$50.00 on an annual basis.

20 (iv) A discount afforded to the general public or a specified
21 group or occupation under normal business conditions. However, the
22 discount may not be based on the fact of public service unless it
23 is a discount program approved by the board.

24 (v) A contribution to a bona fide charity, made in response to
25 a direct solicitation from an executive official or employee or a
26 person acting at his or her direction.

27 (vi) An unsolicited benefit conferred by a person or business

1 if the economic value totals less than \$100.00 per calendar year
2 and if there is no express or implied understanding or agreement
3 that a vote, official action, or decision of an executive official
4 or employee will be influenced.

5 (vii) A tangible or intangible item for a legitimate
6 educational purpose or benefit.

7 (viii) Campaign contributions that are made and reported under
8 the Michigan campaign finance act, 1976 PA 388, MCL 169.201 to
9 169.282.

10 (ix) Compensation or reimbursement of expenses from the state
11 for duties of the office or position.

12 (b) "Board" means the state board of ethics created under
13 section 401, except where the context clearly requires a different
14 definition.

15 (c) "Confidential information" means information made
16 confidential by law or information that is conveyed or accepted
17 with the understanding that the information will be used for
18 official purposes only.

19 (d) "Conflict of interest" means a close economic association
20 or personal relationship between an executive official or employee
21 and a person that is likely to be substantially affected by an
22 official action or decision of an executive official or employee
23 that a reasonable person would believe conflicts with the public
24 duty or obligation of the executive official or employee to
25 exercise objective independent judgment or that a reasonable person
26 would believe creates the appearance that the person may have undue
27 access to confidential information or may otherwise receive favored

1 treatment regarding a public action. Conflict of interest does not
2 include a contract arising out of the status of being a student at
3 a state institution of higher education authorized by section 5 or
4 6 of article VIII of the state constitution of 1963 if the student
5 is elected or appointed to the governing board of the institution.

6 (e) "Employee" means an employee, classified or unclassified,
7 of the executive branch of state government.

8 (f) "Executive official" means any of the following
9 individuals within the executive branch of state government:

10 (i) An individual appointed by the governor.

11 (ii) An individual appointed by an official or body within the
12 executive branch other than the governor who is not a member of the
13 state classified service.

14 (iii) A member of a board of control of an institution of higher
15 education authorized by section 6 of article VIII of the state
16 constitution of 1963.

17 (iv) A president of an institution of higher education
18 authorized by section 5 or 6 of article VIII of the state
19 constitution of 1963 or a deputy of the president when exercising a
20 power vested in the president.

21 (v) An elected official in the executive branch of state
22 government, including the following:

23 (A) The governor.

24 (B) The lieutenant governor.

25 (C) The attorney general.

26 (D) The secretary of state.

27 (E) A member of the state board of education.

1 (F) A regent of the university of Michigan.

2 (G) A member of the board of trustees of Michigan state
3 university.

4 (H) A member of the board of governors of Wayne state
5 university.

6 (g) "Governmental decision" means a determination, action,
7 vote, or disposition upon a motion, proposal, recommendation,
8 resolution, ordinance, or measure on which a vote by the members of
9 a governmental entity is required and by which a governmental
10 entity formulates or effectuates public policy.

11 (h) "Immediate family" means a child residing in the
12 individual's household, a spouse of the individual, or a person
13 claimed by that individual or that individual's spouse as a
14 dependent for federal income tax purposes.

15 (i) "Outside employer or business" means any of the following:

16 (i) An activity, other than service to the governmental entity,
17 from which the executive official or employee receives compensation
18 for services rendered or goods sold or produced.

19 (ii) An entity, other than the governmental entity, if the
20 executive official or employee is a member, official, director, or
21 employee of the entity and he or she receives compensation for
22 services rendered or goods sold or produced by the entity.
23 Compensation does not include reimbursement for necessary expenses,
24 including travel expenses.

25 (iii) An entity in which the executive official or employee has
26 an ownership interest, except a corporation in which the executive
27 official or employee owns less than 10% of the outstanding stock.

1 (2) An executive official or employee shall not engage in a
2 business transaction in which the executive official or employee
3 may profit from his or her official position or authority or
4 benefit financially from confidential information that the
5 executive official or employee has obtained or may obtain by reason
6 of that position or authority. Instruction that is done outside of
7 regularly scheduled working hours or during annual leave or
8 vacation time is not a business transaction under this subsection
9 if the instructor does not have any direct dealing with or
10 influence on the employing or contracting entity associated with
11 his or her course of employment with this state.

12 Sec. 209. (1) An executive official or employee or an outside
13 employer or business with which the executive official or employee
14 is associated shall not enter into a contract valued at \$1,500.00
15 or more with this state or a political subdivision of this state
16 unless the contract is awarded through an open and public
17 competitive process that includes prior public notice and
18 subsequent availability for public inspection of the proposals
19 considered and the contract awarded.

20 (2) An executive official or employee who has or later
21 acquires an interest in an actual or proposed contract with this
22 state or a political subdivision of this state shall publicly
23 disclose the nature and extent of that interest as required by this
24 chapter.

25 (3) A contract or agreement that is executed in violation of
26 this section is voidable only if the person who entered into the
27 contract or took assignment of the contract had actual knowledge of

1 the prohibited conflict. If a person is other than an individual,
2 the actual knowledge must be that of an individual or body finally
3 approving the contract. A contract involving a prohibited conflict
4 of interest under this act is voidable only by a decree of a court
5 of proper jurisdiction. A decree of a court of proper jurisdiction
6 may provide for the reimbursement of a person for the reasonable
7 value of money, goods, material, labor, or services furnished under
8 the contract, to the extent that the governmental entity has
9 benefited. This provision does not prohibit the parties from
10 reaching a settlement outside of court.

11 Sec. 211. (1) Except as provided in sections 213 and 215, an
12 executive official shall abstain from acting formally or informally
13 on a matter before the official or a governmental body on which he
14 or she serves if he or she knows that acting on the matter, or
15 failing to act on the matter, may result in a conflict of interest
16 or a violation of this chapter.

17 (2) If an executive official is required to abstain from
18 acting on a matter, he or she shall file a transactional disclosure
19 statement with the board within 10 days.

20 Sec. 213. Section 211 does not apply and an executive official
21 may vote on, make, or participate in making a governmental decision
22 if all of the following circumstances are present:

23 (a) The requisite quorum necessary for official action on the
24 governmental decision by the public entity to which the executive
25 official has been elected or appointed would not be available if
26 section 211 applied to bar the participation of the executive
27 official in the official action.

1 (b) The executive official is not paid for working more than
2 25 hours per week for this state or a political subdivision of this
3 state.

4 (c) The executive official verbally discloses any personal,
5 contractual, financial, business, or employment interest he or she
6 has in the governmental decision before the body acts on the
7 matter, the disclosure is made part of the public record of the
8 official action on the governmental decision, and a transactional
9 disclosure statement is filed with the board within 10 days of the
10 verbal disclosure.

11 Sec. 215. If a governmental decision involves the awarding of
12 a contract, section 211 does not apply and an executive official is
13 permitted to vote on, make, or participate in making the
14 governmental decision if all of the following circumstances are
15 present:

16 (a) All of the conditions of section 213 are fulfilled.

17 (b) The executive official will directly benefit from the
18 contract in an amount less than \$250.00 or less than 5% of the
19 public cost of the contract, whichever is less.

20 (c) The executive official files a sworn affidavit containing
21 the information described in section 213(c) with the governmental
22 entity making the governmental decision.

23 (d) The affidavit required by subdivision (c) is made a part
24 of the public record of the official action on the governmental
25 decision.

26 Sec. 217. An executive official or employee with direct
27 responsibility for the management of a contract for goods or

1 services on behalf of this state shall refrain from acting formally
2 or informally on a matter before the executive official or employee
3 if he or she knows that acting on the matter, or failing to act on
4 the matter, may result in a conflict of interest or a violation of
5 this act. If an executive official or employee is required to
6 abstain from acting on a matter under this section, he or she shall
7 file a transactional disclosure statement with the board within 10
8 days.

9 Sec. 219. An executive official or employee with direct
10 responsibility for the management of a contract for goods or
11 services on behalf of this state shall not do either of the
12 following:

13 (a) Solicit or accept from a vendor providing goods or
14 services to this state a political contribution to or on behalf of
15 a committee under the Michigan campaign finance act, 1976 PA 388,
16 MCL 169.201 to 169.282.

17 (b) Engage in discussions or negotiations with the vendor
18 providing goods or services to this state under the contract that
19 relate to the direct or indirect employment of the executive
20 official or employee by the vendor.

21 Sec. 221. An executive official or employee shall not
22 represent his or her personal opinion as that of this state or a
23 department or agency of this state. This section does not prohibit
24 an elected executive official or the head of an executive branch
25 department or agency from representing the official position of
26 this state or a department or agency of this state, or from
27 expressing his or her personal opinion on any matter.

1 Sec. 223. An executive official or employee shall use
2 personnel resources, property, and funds under the executive
3 official's or employee's official care and control judiciously and
4 solely in accordance with prescribed constitutional, statutory, and
5 regulatory procedures and not for personal gain or benefit.

6 Sec. 225. (1) An executive official or employee shall not
7 engage in or accept employment or render services for a private or
8 public interest if that employment or service is incompatible or in
9 conflict with the discharge of the executive official's or
10 employee's official duties or if that employment may tend to impair
11 his or her independence of judgment or action in the performance of
12 official duties.

13 (2) An executive official or employee shall not participate in
14 the negotiation or execution of contracts, making of loans,
15 granting of subsidies, fixing of rates, issuance of permits or
16 certificates, or other regulation or supervision relating to a
17 business entity in which the executive official or employee has a
18 financial or personal interest.

19 Sec. 227. (1) A person shall not offer or give anything of
20 value in connection with the official responsibilities of an
21 executive official or employee to any of the following:

22 (a) An executive official or employee.

23 (b) A member of the executive official's or employee's
24 immediate family.

25 (c) An outside employer or business with which the executive
26 official or employee is associated.

27 (d) A customer or client of the executive official or

1 employee.

2 (2) A person shall not induce or attempt to induce an
3 executive official or employee to violate any of the provisions of
4 this chapter.

5 (3) Nothing in this section shall be construed to prohibit a
6 person from receiving a service or benefit, or from using a
7 facility, that is generally available to the public, provided the
8 person does so in the same manner or degree that is available to
9 the general public.

10 (4) Under this section, a corporation, partnership, limited
11 liability company, or other entity is not vicariously liable for
12 the actions of an employee unless the employee acted in the
13 execution of company policy or custom.

14 Sec. 229. This chapter does not prohibit conduct specifically
15 authorized by statute, rule, regulation, the state constitution of
16 1963, or the constitution of the United States.

17 CHAPTER 3. PENALTIES.

18 Sec. 301. The person or body authorized by law to impose
19 disciplinary action shall initiate appropriate proceedings and may
20 take appropriate disciplinary action concerning an executive
21 official or employee who violates this act.

22 Sec. 303. (1) An executive official or employee who has
23 knowledge that another executive official or employee has violated
24 chapter 2 may report the existence of the violation to a
25 supervisor, person, agency, or organization. An executive official
26 or employee who reports or is about to report a violation of
27 chapter 2 is not subject to any of the following sanctions because

1 he or she reported or was about to report a violation of chapter 2:

2 (a) Dismissal from employment or office.

3 (b) Withholding of salary increases that are ordinarily
4 forthcoming to the employee.

5 (c) Withholding of promotions that are ordinarily forthcoming
6 to the employee.

7 (d) Demotion in employment status.

8 (e) Transfer of employment location.

9 (2) Whenever an executive official or employee who has
10 reported or who intends to report a violation of chapter 2 is
11 subject to any of the sanctions under this section for reasons
12 other than the executive official's or employee's actions in
13 reporting or intending to report a violation of chapter 2, the
14 appointing or supervisory authority, before the imposition of a
15 sanction, shall establish by a preponderance of evidence that the
16 sanction to be imposed is not imposed because the executive
17 official or employee reported or intended to report a violation of
18 this act.

19 (3) A person who violates this section is responsible for a
20 civil fine of not more than \$1,000.00.

21 (4) A civil fine recovered under this section shall be
22 deposited in the general fund of this state.

23 Sec. 305. (1) A person who alleges a violation of section 303
24 may bring a civil action for appropriate injunctive relief, or
25 actual damages, or both within 90 days after the occurrence of the
26 alleged violation.

27 (2) An action under subsection (1) may be brought in the

1 circuit court for the county where the alleged violation occurred,
2 the county where the complainant resides, or the county where the
3 person against whom the civil complaint is filed resides.

4 (3) The court rendering judgment in an action under subsection
5 (1) may order reinstatement of the employee, back wages, full
6 reinstatement of fringe benefits and seniority rights, actual
7 damages, or any combination of these remedies as the court
8 considers appropriate. The court may also award the complainant all
9 or a portion of the costs of litigation, including reasonable
10 attorney fees and witness fees, if the court determines that the
11 award is appropriate.

12 (4) As used in subsection (1), "damages" means damages for
13 injury or loss caused by each violation of section 303.

14 Sec. 307. A person who violates this act is subject to a civil
15 fine of not more than \$1,000.00 for each violation, in addition to
16 any other penalty provided in this act or other law of this state.
17 The civil fine shall be imposed by a court of proper jurisdiction
18 or the person or body authorized by law to impose sanctions. A
19 civil fine recovered under this section shall be deposited in the
20 general fund of this state.

21 Sec. 309. A person who violates this act is liable for damages
22 to this state for losses or increased costs incurred by this state
23 as a result of the violation. Damages may be imposed by a court of
24 proper jurisdiction in addition to any other penalty contained in
25 another provision of law.

26 Sec. 311. A person required under chapter 2 to file a
27 transactional disclosure statement who willfully files a false or

1 incomplete transactional disclosure statement or who fails to file
2 a transactional disclosure statement within the time prescribed is
3 guilty of a misdemeanor punishable by imprisonment for not more
4 than 90 days or a fine of not more than \$1,500.00, or both.

5 CHAPTER 4. STATE BOARD OF ETHICS.

6 Sec. 401. (1) The state board of ethics is created as an
7 autonomous entity within the department of civil service.

8 (2) The board shall consist of 9 members, including 7 voting
9 members appointed by the governor with the advice and consent of
10 the senate, 1 of whom shall be designated by the governor as
11 chairperson and all of whom shall be residents of this state and
12 not associated with public employment. Not more than 4 members of
13 the board shall be members of the same political party. An
14 individual serving as a member of the board of ethics created under
15 1973 PA 196, MCL 15.341 to 15.348, on the day prior to the
16 effective date of this act shall serve as a member of the board of
17 ethics created under this chapter until the date on which his or
18 her term as a member of the board of ethics created under 1973 PA
19 196, MCL 15.341 to 15.348, would have expired had this act not been
20 enacted. An individual appointed as a member of the board after the
21 effective date of this act shall be appointed for a term of 4
22 years. If a vacancy occurs, the governor shall fill the vacancy for
23 the remainder of the unexpired term.

24 (3) The attorney general and the state personnel director
25 shall serve ex officio as members of the board without the right to
26 vote.

27 (4) Four voting members of the board shall constitute a

1 quorum, and the affirmative vote of 4 members shall be necessary
2 for any action. Members of the board shall serve without
3 compensation but may be reimbursed for their actual and necessary
4 expenses incurred in the performance of their duties. With the
5 consent of the civil service commission, the state personnel
6 director shall designate an employee of the department of civil
7 service acceptable to the board to act as executive secretary of
8 the board and shall provide clerical or administrative assistance
9 from the department of civil service as the board requests.

10 (5) Except as provided in section 403, business conducted by
11 the board shall be conducted in compliance with the open meetings
12 act, 1976 PA 267, MCL 15.261 to 15.275. Notice of the meetings of
13 the board shall be made public in compliance with the open meetings
14 act, 1976 PA 267, MCL 15.261 to 15.275.

15 (6) Except as provided in section 407, a writing prepared,
16 owned, used, in the possession of, or retained by the board in the
17 performance of an official function is subject to the freedom of
18 information act, 1976 PA 442, MCL 15.231 to 15.246.

19 (7) A voting member of the board shall not while a member of
20 the board hold an elective public office or an elective political
21 party office or accept appointment to or become a candidate for an
22 elective public office or an elective political party office.

23 Sec. 403. (1) The board shall do all of the following:

24 (a) Receive complaints concerning alleged violations of this
25 act by an executive official or employee from any person or entity,
26 inquire into the circumstances surrounding the alleged violation,
27 and make recommendations concerning individual cases to the

1 appointing authority with supervisory responsibility for the
2 official or employee whose activities have been investigated. All
3 departments of state government shall cooperate with the board of
4 ethics in the conduct of its investigations. The board shall
5 review, index, maintain on file, dispose of complaints, make
6 notifications, and conduct investigations.

7 (b) Initiate investigations of practices that could affect the
8 ethical conduct of an executive official or employee.

9 (c) Hold public hearings.

10 (d) Administer oaths or affirmations, subpoena witnesses,
11 compel their attendance, require the production of books or records
12 the board considers relevant or material, and receive sworn or
13 unsworn testimony.

14 (e) Render, index, and maintain on file as provided under this
15 chapter advisory opinions upon request from an executive official
16 or employee or his or her appointing or supervisory authority
17 relating to matters affecting ethical conduct of an executive
18 official or employee.

19 (f) Grant waivers under section 411.

20 (g) Prepare and publish nonconfidential special reports and
21 technical studies to further the purposes of this act.

22 (h) Provide training and education to executive officials and
23 employees regarding the requirements of this act.

24 (i) Prepare reports as required under this act and recommend
25 proposed changes to this act.

26 (j) Provide for public inspection of records required under
27 this act as authorized by law.

1 (k) Select provisions of this act, special reports, and
2 technical studies for reproduction and distribution under this act.

3 (l) Examine transactional disclosure statements filed under
4 this act, the supporting records, and other documents. The board
5 shall index and maintain on file for at least 7 years all
6 transactional disclosure statements filed under this act.

7 (m) Promulgate rules in accordance with the administrative
8 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to carry
9 out the provisions of this act and to govern the board's
10 procedures. For a period of 1 year following the effective date of
11 this act, the board shall have full authority to exercise all of
12 its powers and duties in accordance with temporary rules of
13 procedure adopted by the board. Both the temporary rules adopted
14 and administrative rules promulgated may provide without limitation
15 for any of the following:

16 (i) That the board may request the attendance of any witness
17 whose testimony, in the judgment of the board, will aid in the
18 conduct of its investigations.

19 (ii) That a person appearing before the board must submit
20 either sworn or unsworn testimony as the board may decide and may
21 at all times be represented and accompanied by counsel.

22 (iii) That a record of testimony taken before the board or a
23 hearing officer providing hearing officer services for the board
24 shall be made in the manner prescribed by the board.

25 (iv) That the board may, when it appears to the board necessary
26 for the protection of individual rights, hold its meetings and
27 hearings in private. All other meetings and hearings shall be open

1 to the public.

2 (2) Except for matters before the board involving the attorney
3 general or the department of attorney general, the attorney general
4 shall advise the board concerning legal matters in the issuance of
5 advisory opinions, investigative reports, recommendations, and
6 other reports. If a matter before the board involves the attorney
7 general or the department of attorney general, the attorney general
8 shall designate a special assistant attorney general who is not an
9 employee of the department of attorney general to advise the board
10 independently.

11 (3) When a recommendation to an appointing authority is made
12 by the board that affects an employee in the state classified
13 service, the appointing authority shall initiate appropriate
14 proceedings in accordance with the recommendation and pursuant to
15 the rules of the civil service commission.

16 (4) When a recommendation to an appointing authority is made
17 by the board concerning an unclassified employee or appointee, the
18 appointing authority shall take appropriate disciplinary action
19 which may include dismissal, suspension, or removal.

20 (5) In any matter before the board where the board determines
21 that there may have been a violation of the laws of this state, the
22 board shall forward the matter to the governor and the attorney
23 general or another appropriate law enforcement authority, unless
24 the matter involves the attorney general or the department of
25 attorney general. When a matter involves the attorney general or
26 the department of attorney general, the board shall forward the
27 matter to the governor and the county prosecutor for the county of

1 Ingham or another appropriate law enforcement authority but not the
2 attorney general or department of attorney general.

3 Sec. 405. (1) The board may act only with respect to the
4 executive officials, employees, former executive officials, and
5 former employees covered by this act.

6 (2) The termination of an elected executive official's term of
7 office does not affect the jurisdiction of the ethics board with
8 respect to the requirements imposed on him or her by this act.

9 Sec. 407. (1) If a majority vote of the board determines that
10 there is reason to believe that this act was violated, the board
11 shall initiate an investigative proceeding to determine whether a
12 violation occurred. The board shall mail a notice of the
13 investigation and the nature of the alleged violation to a person
14 under investigation within 5 days after the decision to undertake
15 an investigation is made. Every 60 days until a final determination
16 is made, the board shall mail to the complainant and to the person
17 under investigation notice of the action taken to date by the board
18 along with the reasons for the action or nonaction.

19 (2) Except as otherwise required by law, the board's actions
20 and the records relative to an investigation shall be confidential
21 until the board makes a final determination under this chapter.

22 (3) All state departments, agencies, and institutions shall
23 cooperate with the board when it is conducting an investigation.

24 (4) If the board determines that this act was not violated,
25 the records and actions relative to the investigation and
26 determination shall remain confidential unless the person
27 investigated requests in writing that the records and actions be

1 made public. If the ethics board determines that this act was
2 violated, the board shall make a recommendation of sanction to the
3 appropriate authority designated in section 409.

4 Sec. 409. (1) After a hearing providing for due process
5 procedural requirements and subject to applicable provisions of
6 law, the board may recommend disciplinary action. The
7 recommendation of the board shall be made to the person or body
8 authorized by law to impose or recommend discipline. For purposes
9 of this act, the person or body authorized by law to impose or
10 recommend discipline for an executive official is 1 of the
11 following:

12 (a) For the governor, the state legislature as authorized in
13 the state constitution of 1963.

14 (b) For an elected executive official other than the governor,
15 the governor.

16 (c) For an executive official appointed by the governor, the
17 governor.

18 (d) For an executive official appointed by an individual or
19 entity other than the governor or for an employee, the appointing
20 authority of the executive official or employee.

21 (2) The board shall conduct and complete the hearing with
22 reasonable promptness. If the board refers the matter to the person
23 or body authorized by law to impose disciplinary action or if the
24 board refers the matter to the attorney general, the county
25 prosecutor for the county of Ingham, or other appropriate law
26 enforcement authority, the board may adjourn the matter pending
27 determination by the person, body, attorney general, prosecutor, or

1 other appropriate law enforcement authority.

2 (3) After a hearing providing for due process procedural
3 requirements, the board may recommend that sanctions and penalties
4 be imposed upon an executive official or employee found by the
5 board to have violated this act. The recommendation of the board
6 shall be made to the person or body authorized by law to impose or
7 recommend sanctions. If ordered to pay a civil fine, the executive
8 official or employee shall pay the fine to the state treasurer for
9 deposit in the general fund.

10 (4) The board may initiate an action or special proceeding in
11 the court of appropriate jurisdiction to obtain damages under
12 section 309.

13 (5) A person other than the board shall not bring an action in
14 court alleging a violation of this act unless all of the following
15 apply:

16 (a) The person initiating the action has first filed a sworn
17 statement with the board alleging the violation by the executive
18 official or employee.

19 (b) Not less than 6 months and not more than 10 months have
20 elapsed since the statement was filed with the board, and the board
21 has failed to file a final determination in the matter.

22 Sec. 411. (1) Upon written application and a showing of
23 compelling need by the executive official or employee, the board
24 may grant the executive official or employee a waiver of a
25 provision of this act.

26 (2) A waiver may be granted only at an open meeting after
27 public notice as provided in the open meetings act, 1976 PA 267,

1 MCL 15.261 to 15.275. The notice shall state that a waiver is being
2 considered. A waiver shall be in writing and shall state the
3 grounds upon which it is granted.

4 (3) Not more than 10 days after granting a waiver, the board
5 shall send a copy of the decision to the executive official or
6 employee, the person or body authorized by law to impose discipline
7 upon the executive official or employee, and the governor. The
8 decision shall include the name of the person requesting the waiver
9 and a general description of the circumstances of the waiver. The
10 board shall index and maintain on file the application, decision,
11 and other records and proceedings relating to a waiver proceeding.

12 Sec. 413. (1) Upon the written request of an executive
13 official or employee, the board shall render a written advisory
14 opinion regarding the interpretation or application of this act.

15 (2) Advisory opinions and requests for advisory opinions shall
16 be indexed and maintained on file by the board.

17 (3) An executive official or employee who has submitted a
18 written request for an advisory opinion to the board may bring a
19 civil action against the board to compel it to issue the advisory
20 opinion. The complaint shall clearly identify the matters or
21 proceedings before the board. An action shall not be brought under
22 this subsection unless not less than 6 months or more than 10
23 months have elapsed since the filing of the request for an advisory
24 opinion and the board has failed to issue an advisory opinion in
25 the matter.

26 (4) If an advisory opinion rendered by the board has not been
27 amended or revoked, it is binding on the board in a subsequent

1 proceeding concerning the person who requested the opinion and who
2 acted in good faith, unless the person omitted or misstated a
3 material fact. The person may rely on the advisory opinion, and a
4 court may receive the opinion as evidence for the person's defense
5 in a civil action.

6 Sec. 415. A person aggrieved by a decision of the board may
7 seek judicial review and relief in a court of proper jurisdiction.

8 Sec. 417. The board shall do both of the following:

9 (a) Make information concerning this act available to each
10 executive official or employee, to the public, and to persons
11 interested in doing business with this state, through appropriate
12 means.

13 (b) Develop educational materials and an educational program
14 for executive officials and employees to inform them of their
15 duties and responsibilities under this act.

16 Sec. 419. (1) The board shall prepare and submit an annual
17 report to the governor and each house of the legislature,
18 summarizing the activities of the board under this act. The report
19 may also recommend statutory or administrative changes to this act.

20 (2) The board shall review this act and the board's rules,
21 regulations, and administrative procedures annually to determine if
22 they set forth clear and enforceable common-sense standards of
23 conduct and promote integrity, public confidence, and participation
24 in state government.

25 Sec. 421. (1) Not more than 90 days after the first meeting of
26 the board, and after then as appropriate, the board shall transmit
27 to each executive official and department copies of the provisions

1 of this act that the board considers necessary for distribution and
2 shall make copies available to the public.

3 (2) The board shall furnish an executive official or employee
4 who is elected, appointed, or employed after the effective date of
5 this act with a copy of the selected provisions of this act within
6 10 days after he or she enters upon the duties of his or her
7 position.

8 (3) The board's failure to comply with the provisions of this
9 section or an executive official's or employee's failure to receive
10 a copy of the provisions of this act does not affect the duty to
11 comply with or the ability to enforce this act.

12 (4) The board shall transmit copies of special reports and
13 technical studies relating to this act and its administration to
14 the governor in a form suitable for distribution.

15 Enacting section 1. 1968 PA 318, MCL 15.301 to 15.310, and
16 1973 PA 196, MCL 15.341 to 15.348, are repealed.

17 Enacting section 2. This act does not take effect unless all
18 of the following bills of the 93rd Legislature are enacted into
19 law:

20 (a) Senate Bill No.____ or House Bill No. 5982(request no.
21 04822'05 *).

22 (b) Senate Bill No.____ or House Bill No. 5981(request no.
23 04823'05 **).